[fol. 6]

SCHEDULE A-3

Creditors Whose Claims Are Unsecured

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher	Names of creditors	Residences. (If unknown, that fact must be stated)	Where and when contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	Amount $ Cts.
	Oregon Contract Company	516 Guaranty Building Portland, Oregon		For rent of equipment year 1929	5,150.00
	Meier & Frank Co.	Portland, Oregon			495.00
	Lipman, Wolf & Co.	Portland, Oregon			45.00
	R. E. Hayward	302 Oak St. Portland, Oregon			60.00

[fol. 7]

Fidelity & Deposit Co. of Maryland, Failing Building, Portland, Oregon	Judgment dated 12/4/30 recorded in Docket 26 page 8.	10,000.00
Olds, Wortman & King 10th & Morrison Sts., Portland, Oregon		13.00
M. & H. H. Sichel 380 Washington St., Portland, Oregon		16.00
	Total,	$15,779.00

— Geo. C. Arenz
Petitioner.

SCHEDULE A–4

Liabilities on Notes or Bills Discounted Which Ought to Be Paid By Drawers, Makers, Acceptors, or Indorsers

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher	Names of holders as far as known	Residences. (If unknown, that fact must be stated)	Place where contracted	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount
					$ Cts.
				Total,	

Geo. C. Arenz
Petitioner

[fol. 8]

SCHEDULE A–5

Accommodation Paper

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher	Names of holders	Residences. (If unknown, that fact must be stated)	Names and residences of persons accommodated	Place where contracted	Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount $ Cts.
					Total,	

Geo. C. Arenz

Petitioner.

[fol. 9] Oath to Schedule A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE — DIVISION, DISTRICT OF OREGON

In Bankruptcy. No. —

In the Matter of GEORGE C. ARENZ

UNITED STATES OF AMERICA,
District of Oregon,
County of Multnomah, ss:

On this 2nd day of May A. D. 1931, before me personally came George C. Arenz, the person mentioned in and who subscribed to the foregoing Schedule (marked A 1, 2, 3, 4, 5), and who, being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

Geo. C. Arenz.

Subscribed and sworn to before me this 2nd day of May A. D. 1931. My commission expires May 25, 1934. Andrew T. Lewis, Notary Public for Oregon. (Seal.)

[fol. 10]

SCHEDULE B—Statement of All Property of Bankrupt

SCHEDULE B–I

Real Estate

Location and description of all real estate owned by debtor, or held by him	Incumbrances thereon, if any, and dates thereof	Statement of particulars relating thereto	Estimated value
			$ Cts.
Lot Ten (10), Block Thirty (30), Irvington, in the City of Portland, Multnomah County, Oregon,	Mortgage $3,750.00	Held by an estate of entirety with Hazel Arenz, wife of bankrupt.	7,500.00
		Less mortgage,	3,750.00
			3,750.00
		Bankrupt's undivided one-half,	1,875.00
An undivided one-third interest in Lot 11, Section 4, Township 3 North, Range 1, West of the Willamette Meridian, known as Wendt's Island,			300.00
		Total,	$2,175.00

Geo. C. Arenz

Petitioner.

[fol. 11]

SCHEDULE B–2

Personal Property

		$	Cts.
A. Cash on hand.	None		
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).			
C. Stock in trade in ..... business of ..... at ..... of the value of			
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz.:			
E. Books, prints and pictures, viz.:			
F. Horses, cows, sheep, and other animals, (with number of each) viz.:			
G. Carriages and other vehicles viz.:			
H. Farming stock and implements of husbandry viz.:			
I. Shipping and shares in vessels, viz.:			

[fol. 12]

Personal Property

		$	Cts.
K. Machinery, fixtures, apparatus, and tools used in business with the place where each is situated, viz.:			
L. Patents, copyrights and trade marks, viz.:			
M. Goods or personal property of any other description, with the place where each is situated, viz.:	Membership or loan certificate in Columbia Country Club, Portland, Oregon.		100.00
		Total,	100.00

Geo. C. Arenz
Petitioner.

SCHEDULE B-3

Choses in Action

		$	Cts.
A. Debts due petitioner on open account.			
B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.			
C. Policies of insurance. (Surrender value only.)	New York Life Insurance Co., for $5000.00 against which is borrowed $1000.00, Surrender value,		?

[fol. 13]

D. Unliquidated claims of every nature with their estimated value.

E. Deposits of money in banking institutions and elsewhere.

Total, ?

Geo. C. Arenz
Petitioner.

SCHEDULE B–4

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the debtor.]

General interest	Particular description	Supposed value of my interest
		$ Cts.
Interest in land.		
Personal property.		
Property in money, stocks, shares, bonds, annuities, etc.	[none]*	
Rights and powers, legacies and bequests.	[none]*	
Property heretofore conveyed for benefit of creditors.	[none]*	
	Total	

[*Stricken in copy.]

[fol. 14]

		Amount realized from proceeds of property conveyed $ Cts.
What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount [none]* realized therefrom, and disposal of same, so far as known to debtor.		
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.	For filing fees	40.00
	Total,	40.00

[*Stricken in copy.]

Geo. C. Arenz
Petitioner.

SCHEDULE B-5

A Particular Statement of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy, giving each item of property, and its valuation, and, if any portion of it is real estate, its location, description and present use.

[fol. 15]		Valuation
		$ Cts.
Military uniform, arms and equipment.		
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.	Lot Ten (10), Block Thirty (30), Irvington, in the City of Portland, Multnomah County, Oregon. (Home of bankrupt and his family)	$1,875.00
(See State Law)	See. 3-208, Oregon Laws	
	Total,	1,875.00

Geo. C. Arenz
Petitioner.

SCHEDULE B-6

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reasons for their custody of the same.

Books.	[none.]*
Deeds.	[none.]*
Papers.	[none.]*

Geo. C. Arenz
Petitioner.

[* Stricken in copy.]

[fol. 16] Oath to Schedule B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE — DISTRICT OF OREGON, — DIVISION

In Bankruptcy. No. —

In the Matter of GEORGE C. ARENZ

UNITED STATES OF AMERICA,
District of Oregon,
County of Multnomah, ss:

On this 2nd day of May A. D. 1931, before me personally came George C. Arenz the person mentioned in and who subscribed to the foregoing Schedule (marked B 1, 2, 3, 4, 5, 6), and who, being by me first duly sworn, did declare the said Schedule to be a statement of all his Estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

Geo. C. Arenz.

Subscribed and sworn to before me this 2nd day of May, A. D. 1931. My commission expires May 25, 1934. Andrew T. Lewis, Notary Public for Oregon. (Seal.)

[fol. 17] Summary of Debts and Assets

[From the Statement of the Bankrupt in Schedules A and B]

Schedule A—1 (1)	Taxes and Debts due the United States	
Schedule A—1 (2)	Taxes due States, Counties, Districts and Municipalities	$200.00
Schedule A—1 (3)	Wages	
Schedule A—1 (4)	Other debts preferred by law	
Schedule A—2	Secured Claims	12,500.00
Schedule A—3	Unsecured Claims	15,779.00
Schedule A—4	Notes and Bills which ought to be paid by other parties thereto	
Schedule A—5	Accommodation Paper	
	Schedule A, Total	28,479.00
Schedule B—1	Real Estate	2,175.00
Schedule B—2-a	Cash on Hand	
Schedule B—2-b	Bills, Promissory Notes, and Securities	
Schedule B—2-c	Stock in Trade	
Schedule B—2-d	Household Goods, etc.	
Schedule B—2-e	Books, Prints and Pictures	
Schedule B—2-f	Horses, Cows and other Animals	
Schedule B—2-g	Carriages and other Vehicles	
Schedule B—2-h	Farming Stock and Implements	

[fol. 18]

Schedule B—2-i	Shipping and Shares in Vessels	
Schedule B—2-k	Machinery, Tools, etc.	
Schedule B—2-l	Patents, Copyrights, and Trade-Marks	
Schedule B—2-m	Other Personal Property	100.00
Schedule B—3-a	Debts due on Open Accounts	
Schedule B—3-b	Stocks, Negotiable Bonds, etc.	
Schedule B—3-c	Policies of Insurance (Surrender Value Only) unknown	?
Schedule B—3-d	Unliquidated Claims	
Schedule B—3-e	Deposits of Money in banks and elsewhere	
Schedule B—4	Property in Reversion, Remainder, Trust, etc.	
Schedule B—5	Property claimed to be exempted. $	
Schedule B—6	Books, Deeds and Papers:	
	Schedule B, Total	

Geo. C. Arenz, Petitioner.

Filed May 4, 1931, at 12 o'clock M. G. H. Marsh, Clerk.

[fol. 19] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B 16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ADJUDICATION OF BANKRUPTCY AND ORDER OF REFERENCE—Filed May 4, 1931

At Portland, in said District, on the 4th day of May, A. D. 1931, before me the Honorable John H. McNary, Judge of said Court in Bankruptcy, the petition of George C. Arenz, that he be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said George C. Arenz is hereby declared and adjudged a bankrupt accordingly.

It is therefore ordered that upon the petition filed in this Court by or against said bankrupt on the 4th day of May, A. D. 1931, said matter be referred to A. M. Cannon, one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said George C. Arenz shall attend before said Referee on the 20th day of May, 1931, at Portland, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said bankruptcy.

[fol. 20] Witness the Honorable John H. McNary, Judge of the said Court, and the seal thereof, at Portland, in said District, on the 4th day of May, A. D. 1931.

G. H. Marsh, Clerk, by L. S. Rogers, Deputy Clerk.

(Seal of the Court.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B 16042

In the Matter of GEORGE C. ARENZ, Bankrupt

BANKRUPT'S PETITION FOR DISCHARGE—Filed July 20, 1931

To the Honorable James A. Fee and John McNary, Judge of the District Court of the United States for the District of Oregon, — Division:

George C. Arenz, of Portland, in the County of Multnomah and State of Oregon, in said District, respectfully represents:

That on the — day of May, last past, he was duly adjudged bankrupt under the Acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the [fol. 21] requirements of said Acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said Bankrupt Acts, except such debts as are excepted by law from such discharge.

Dated this 18th day of July A. D. 1931.

Geo. C. Arenz, Bankrupt.

Duly sworn to by George C. Arenz. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. 16042

In the Matter of GEORGE C. ARENZ, Bankrupt

PROOF OF DEBT—Filed July 17, 1931

At Portland, in the District of Oregon, on May 26th, A. D. 1931, came Clarence D. Porter in said District of Oregon, and made oath and says:

Corporation

That he is Manager of Fidelity and Deposit Company of Maryland, a corporation incorporated by and under the laws of the State of Maryland and carrying on business at Portland, County of Multnomah, State of Oregon, and that he is duly authorized to make this Proof of Claim and Power of Attorney; that there is no officer of said corporation present within the District of Oregon to make this proof of claim.

Partnership

That he is a member of the firm of —— ——, a corpartnership, consisting of himself and —— ——, and carrying on business at ——, County of ——, State of ——.

That the above named bankrupt, the person by whom a petition for adjudication of bankruptcy has been filed, was [fol. 23] at and before the filing of said petition and still is justly and truly indebted to said Fidelity and Deposit Company of Maryland, in sum of Ten Thousand and 00/100 ($10,000.00) Dollars.

That the nature and consideration of said debt is as follows:

Judgment rendered in the Circuit Court of the State of Oregon for Multnomah County upon the 4th day of December, 1930, in favor of the Oregon City Sand and Gravel Company against the bankrupt, and assigned to the Fidelity and Deposit Company of Maryland.

Sign individual name: Clarence D. Porter.

Subscribed and sworn to before me May 26th, 1931. Elnor Whitson, Notary Public. (Seal.) My commission expires Oct. 31, 1932.

Power of Attorney

To John Lichty:

The undersigned hereby authorizes you, or any of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting [fol. 24] or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned in said matter. And does hereby irrevocably execute this power; and all powers of attorney hereafter executed shall be without effect and void.

In witness whereof the name and seal of the undersigned is hereby affixed May 26, A. D. 1931.

Signature of claimant, whether corporation: Fidelity and Deposit Company of Maryland, by Clarence D. Porter, Manager of said Corporation. (Seal.)

[fol. 25] Notarial Acknowledgment

UNITED STATES OF AMERICA,
District of Oregon, ss:

On May 26th, 1931, before me personally came Clarence D. Porter, to me known, and known to me to be Manager of

Fidelity and Deposit Company of Maryland, who being first duly sworn did say: that he is duly authorized to execute the foregoing Power of Attorney in behalf of said claimant and acknowledged that he executed the said Power of Attorney for and on behalf of said claimant, and the same to be his free act and deed and the free act and deed of claimant, and that he is duly authorized to act.

Subscribed and sworn to before me the day and year in this my certificate above written. My commission expires October 31, 1932. Elnor Whitson, Notary Public in and for the State of Oregon, County of Multnomah. (Seal.)

Filed July 10, 1931. A. M. Cannon, Referee.
Filed July 17th, 1931. G. H. Marsh, Clerk.

[fol. 26] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

OBJECTIONS TO DISCHARGE OF BANKRUPT—Filed Aug. 21, 1931

Fidelity and Deposit Company of Maryland, of Baltimore, State of Maryland, a party interested in the estate of said George C. Arenz, bankrupt, does hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition does file the following specifications:

I

That the bankrupt obtained money or property on credit upon a materially false statement in writing made by him to Fidelity and Deposit Company of Maryland for the purpose of obtaining credit from such person. That the said statement so made by the bankrupt was a financial statement made by him on or about the 15th day of May, 1929, as an inducement to secure the execution by the said Fidelity and Deposit Company of Maryland as surety of a bond of

the said George C. Arenz running to the State of Oregon in the sum of Seventy-one Thousand Three hundred Six and 25/100 ($71,306.25) Dollars, and which said statement did induce the execution of the said bond by the said Fidelity [fol. 27] and Deposit Company of Maryland on or about the 15th day of May, 1929, which said bond was also executed by the said bankrupt and principal and delivered to the State of Oregon on or about said date. That said statement was false in that the said bankrupt failed to list an indebtedness owed by him to the Oregon Contract Company, the amount of which said indebtedness is unknown to this creditor, or its agent signing this objection and specification, but which indebtedness this creditor is informed and believes was in an amount of approximately Ten Thousand ($10,000.00) Dollars. That the said financial statement was further false in that the bankrupt listed as owned by him one hundred twenty-five (125) shares of stock in the Oregon Contract Company of a value of Twelve Thousand Five Hundred ($12,500.00) Dollars, which said stock he therein stated was not pledged for any purpose, while in truth and in fact the said stock was, at said time, pledged to the Oregon Contract Company to secure it for the indebtedness of the bankrupt to the said Contract Company. That said financial statement was further false in that said bankrupt therein stated that he had never failed in business, nor compromised with creditors, when in truth and in fact he had, on several occasions, failed in business and voluntarily been adjudicated bankrupt. That said financial statement was further false in that the bankrupt therein stated that he had never defaulted on a contract, when in truth and in fact he had, upon several occasions, defaulted on contracts. That the said financial statement was further false in that the [fol. 28] bankrupt listed as an asset his home located at 693 Siskiyou Street, Portland, Oregon, which he represented had a forced sale value of Thirteen Thousand ($13,000.00) Dollars, when in truth and in fact said home had no greater or further forced sale value than the sum of Nine Thousand ($9,000.00) Dollars.

II

That the bankrupt has committed an offense punishable by imprisonment, as provided by the Act of July 1st, 1898, Chapter 541, Section 29; Title 11 United States Code, Sec-

tion 52, in that he made a false oath to schedule "B" of his schedules filed in this proceeding, in that he knowingly and fraudulently omitted to schedule in such schedule "B" 125 shares of the capital stock of Oregon Contract Company, a corporation, which said property was, at the time of the making of said schedule and at the time said schedule was sworn to, the property of the bankrupt.

Fidelity and Deposit Company of Maryland, Creditor, by R. E. Pinney, Resident Vice-President.
(Seal.) John Lichty, Attorney for Creditor.

[fol. 29] *Duly sworn to by R. E. Pinney. Jurat omitted in printing.*

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within Objections to discharge of bankrupt is hereby accepted in Multnomah County, Oregon this 21st day of August, 1931 by receiving a copy thereof, duly certified to as such by John Lichty, Attorney for objecting creditor.

Arthur H. Lewis, of Attorney- for Bankrupt.

[File endorsement omitted.]

[fol. 30] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

DEMURRER TO SPECIFICATION IN OPPOSITION TO DISCHARGE—
Filed Aug. 28, 1931

To the Hon. John McNary and James A. Fee, Judges of the United States District Court:

George C. Arenz, the bankrupt herein, appearing by Arthur H. Lewis, his attorney, demurs and excepts to the specifications of the ground in opposition to his discharge herein filed and demurs and excepts specifically to specifications I and II of said objections to his discharge filed by the

Fidelity and Deposit Company of Maryland on the ground and for the reasons that the same do not state facts sufficient to constitute a bar to the bankrupt's discharge.

Arthur H. Lewis, Attorneys for Bankrupt.

Dated this 28th day of August, 1931.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this — day of August, 1931.

[fol. 31] John Lichty, Attorneys for Fidelity and Deposit Co. of Maryland.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

RECORD OF HEARING ON DEMURRER—Filed December 14, 1931

This cause came on to be heard upon the demurrer of the said bankrupt to the objections to discharge filed by Fidelity & Deposit Company of Maryland, the bankrupt appearing by Mr. Arthur H. Lewis, of counsel, and the objecting creditor appearing by Mr. John Lichty, of counsel; whereupon the court having heard the argument of counsel, will advise thereof.

Witness the Honorable James Alger Fee, Judge of said Court, and the seal thereof, at Portland, in said district, this 14th day of December, 1931.

[fol. 32] G. R. Marsh, Clerk, by L. S. Rogers, Deputy. (Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ORDER SUSTAINING DEMURRER—Filed Jan. 27, 1932

A demurrer and exception having been made by the bankrupt herein to the specifications of the objections filed by

the Fidelity & Deposit Company of Baltimore, Maryland, in opposition to the bankrupt's discharge, and said demurrer and exceptions having come on for argument on the 14th day of December, 1931, and, after hearing argument of counsel, said bankrupt appearing by Arthur H. Lewis, and the said Fidelity & Deposit Company of Baltimore, Maryland, appearing by John Lichty, and due consideration having been had thereon,

Ordered that the said demurrer and exceptions be, and the same is, hereby sustained in all respects as to each specification of said objections, and it is

Further ordered that the said Fidelity & Deposit Com-
[fol. 33] pany of Baltimore, Maryland, have five days time within which to amend or file amended objections to said bankrupt's discharge.

James Alger Fee, United States District Judge.

Dated this 18th day of January, 1932.

Service of copy accepted this 26th day of January, 1932.
John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

AMENDED SPECIFICATIONS IN OBJECTION TO DISCHARGE OF BANKRUPT—Filed Jan. 23, 1932

Comes now Fidelity and Deposit Company of Maryland, of Baltimore, State of Maryland, a corporation, and alleges that it is a creditor of the bankrupt, George C. Arenz, having proved and filed, in the above bankrupt estate, its claim against the said bankrupt, in the sum of Ten Thousand
[fol. 34] ($10,000) Dollars, and does hereby oppose the granting to the said bankrupt of a discharge from his debts, and for grounds of such opposition does file the following specifications:

I

That the bankrupt obtained money or property on credit upon a materially false statement in writing made by him to Fidelity and Deposit Company of Maryland for the purpose of obtaining credit from such person. That the said statement so made by the bankrupt was a financial statement made by him on or about the 15th day of May, 1929, as an inducement to secure the execution by the said Fidelity and Deposit Company of Maryland as surety on a bond of the said George C. Arenz running to the State of Oregon in the sum of Seventy-one Thousand Three Hundred Six and 25/100 ($71,306.25) Dollars, and which said statement did induce the execution of the said bond by the said Fidelity and Deposit Company of Maryland on or about the 15th day of May, 1929, which said bond was also executed by the said bankrupt and principal and delivered to the State of Oregon on or about said date.

That by virtue of having executed the said bond for the said bankrupt, the said Fidelity and Deposit Company of Maryland became legally obligated to pay, and did pay, a certain judgment entered against the said bankrupt and the said surety, jointly, in favor of Oregon City Sand and Gravel Company, a corporation, in the sum of Ten Thou-[fol. 35] sand ($10,000.00) Dollars, said judgment being rendered in the Circuit Court of the State of Oregon for the County of Multnomah in cause No. N-7588.

That said statement was false in that the said bankrupt failed to list an indebtedness owed by him to the Oregon Contract Company, the amount of which said indebtedness is unknown to this creditor, or its agent signing this objection and amended specification, but which indebtedness this creditor is informed and believes was in an amount of approximately Ten Thousand ($10,000.00) Dollars. That the said financial statement was further false in that the bankrupt listed as owned by him one hundred twenty-five (125) shares of stock in the Oregon Contract Company of a value of Twelve Thousand Five Hundred ($12,500.00) Dollars, which said stock he therein stated was not pledged for any purpose, while in truth and in fact the said stock was, at said time, pledged to the Oregon Contract Company to secure it for the indebtedness of the bankrupt to the said Oregon Contract Company. That said financial statement

was further false in that said bankrupt therein stated that he had never failed in business, nor compromised with creditors, when in truth and in fact he had, on several occasions, failed in business and voluntarily been adjudicated bankrupt. That said financial statement was further false in that the bankrupt therein stated that he had never defaulted on a contract, when in truth and in fact he had, upon several occasions, defaulted on contracts. That the said [fol. 36] financial statement was further false in that the bankrupt listed as an asset his home located at 693 Siskiyou Street, Portland, Oregon, which he represented had a forced sale value of Thirteen Thousand ($13,000.00) Dollars, when in truth and in fact said home had no greater or further forced sale value than the sum of Nine Thousand ($9,000.00) Dollars.

II

That the bankrupt obtained an extension of credit from the objecting creditor upon a materially false statement in writing made by him to the said creditor for the purpose of obtaining such extension of credit from the said creditor; that the statement so made by the bankrupt was a financial statement made by him on or about the 15th day of May, 1929, as an inducement to secure the execution of the said Fidelity and Deposit Company of Maryland as surety on a bond of the said George C. Arenz running to the State of Oregon in the sum of Seventy-one Thousand Three Hundred Six and 25/100 ($71,306.25) Dollars, and which said statement did induce the execution of the said bond by the said Fidelity and Deposit Company of Maryland on or about the 15th day of May, 1929, which said bond was also executed by the said bankrupt and principal and delivered to the State of Oregon on or about said date.

That by virtue of having executed the said bond for the said bankrupt, the said Fidelity and Deposit Company of Maryland became legally obligated to pay, and did pay, a [fol. 37] certain judgment entered against the said bankrupt and the said surety, jointly in favor of Oregon City Sand and Gravel Company, a corporation, in the sum of Ten Thousand ($10,000.00) Dollars, said judgment being rendered in the Circuit Court of the State of Oregon for the County of Multnomah in cause No. N-7588.

That said statement was false in that the said bankrupt failed to list an indebtedness owed by him to the Oregon Contract Company, the amount of which indebtedness is unknown to this creditor, or its agent signing this objection and amended specification, but which indebtedness this creditor is informed and believes was in an amount of approximately Ten Thousand ($10,000.00) Dollars. That the said financial statement was further false in that the bankrupt listed as owned by him one hundred twenty-five (125) shares of stock in the Oregon Contract Company of a value of Twelve Thousand Five Hundred ($12,500.00) Dollars, which said stock he therein stated was not pledged for any purpose, while in truth and in fact the said stock was, at said time, pledged to the Oregon Contract Company to secure it for the indebtedness of the bankrupt to the said Oregon Contract Company. That said financial statement was further false in that said bankrupt therein stated that he had never failed in business, nor compromised with creditors, when in truth and in fact he had, on several occasions, failed in business and voluntarily been adjudicated bankrupt. That said financial statement was further false [fol. 38] in that the bankrupt therein stated that he had never defaulted on a contract, when in truth and in fact he had, upon several occasions, defaulted on contracts. That the said financial statment was further false in that the bankrupt listed as an asset his home located at 693 Siskiyou Street, Portland, Oregon, which he represented had a forced sale value of Thirteen Thousand ($13,000.00) Dollars, when in truth and in fact said home had no greater or further forced sale value than the sum of Nine Thousand ($9,000.00) Dollars.

III

That the bankrupt has committed an offense punishable by imprisonment, as provided by the Act of July 1st, 1898, Chapter 541, Section 29; Title 11 United States Code, Section 52, in that he made a false oath to schedule "B" of his schedules filed in this proceeding, in that he knowingly and fraudulently omitted to schedule in such schedule "B" 125 shares of the capital stock of Oregon Contract Company, a corporation, which said property was, at the time of the

making of said schedule and at the time said schedule was sworn to, the property of the bankrupt.

Fidelity and Deposit Company of Maryland, Creditor, by R. E. Pinney, Resident Vice President.
John Lichty, Attorney for Creditor. (Seal.)

[fol. 39] *Duly sworn to by R. E. Pinney. Jurat omitted in printing.*

Due service of the foregoing Specifications in Objection to Discharge of Bankrupt accepted in Portland, Oregon, this 23d day of January, 1931.

Lewis, Lewis & Finnegan, Attorneys for Bankrupt.

[File endorsement omitted.]

[fol. 40] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

DEMURRER TO SPECIFICATIONS IN OPPOSITION TO DISCHARGE—Filed Jan. 26, 1932

To the Hon. John McNary and James A. Fee, Judges of the United States District Court:

George C. Arenz, the bankrupt herein, appearing by Arthur H. Lewis, his attorney, demurs and excepts to the amended specifications in opposition to his discharge herein filed by the Fidelity & Deposit Company of Baltimore, Maryland, generally upon the ground that the same does not state facts sufficient to constitute a bar to the bankrupt's discharge and demurs and excepts specifically to specifications I, II and II of the Amended objections to his discharge made by the said Fidelity & Deposit Company of Baltimore, Maryland, upon the ground and for the reason that the same does not state facts sufficient to constitute a bar to the said bankrupt's discharge.

Arthur H. Lewis, Attorneys for Bankrupt.

Dated this 26th day of January, 1932.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby [fol. 41] accepted in Multnomah County, Oregon, on this 26th day of January, 1932.

John Lichty, Attorney for Fidelity & Deposit Co. of Maryland.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ORDER SUSTAINING DEMURRER TO OBJECTIONS—Filed May 12, 1932

Bankrupt having demurred and excepted to the amended specifications upon objection to the discharge of the bankrupt filed by the Fidelity & Deposit Company of Baltimore, Maryland, in opposition to the bankrupt's discharge and said demurrer and exception having been submitted on briefs, and the court after due consideration having been had thereon,

Ordered that the said demurrer and exceptions to the amended specifications be, and the same is hereby sustained in all respects as to each specification of said amended objections; and it is

Further ordered that order be entered by the Clerk of this Court granting a full discharge of said bankrupt from all debts provable against his estate under said bankrupt act, [fol. 42] except such debts as are excepted by law from such discharge.

James Alger Fee, United States District Judge.

Dated this 12th day of May, 1932.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

DISCHARGE OF BANKRUPT—Filed May 12, 1932

Whereas George C. Arenz, of Portland, in the County of Multnomah, in said District, has been duly adjudged a bankrupt, under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf,

It is therefore ordered by the Court that said George C. Arenz be discharged from all debts and claims which are made provable by said Acts against his estate, and which existed on the 4th day of May, A. D. 1931, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

[fol. 43] Witness the Honorable James Alger Fee, Judge of said District Court, and the seal thereof, this 12th day of May, A. D., 1932.

G. H. Marsh, Clerk, by L. S. Rogers, Deputy Clerk.
(Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

NOTICE OF EXCEPTIONS—Filed May 21, 1932

To the Honorable James A. Fee, Judge of the United States District Court for the District of Oregon:

Comes now Fidelity and Deposit Company of Maryland, a creditor of the above named bankrupt, and excepts to the order of the court made and entered the 12th day of May, 1932, sustaining the demurrer to the aforementioned creditor's amended specifications in opposition to discharge.

The Fidelity and Deposit Company of Maryland further excepts to the order of the court made and entered the 12th day of May, 1932, allowing the petition of the above bank-
[fol. 44] rupt for a discharge in bankruptcy and granting to the said bankrupt said discharge in bankruptcy.

The foregoing exceptions are made for the reason and upon the ground that the amended specifications in opposition to discharge of the objecting creditor states facts sufficient to constitute a bar to the above named bankrupt's discharge.

Dated this 21st day of May, 1932.

John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

PETITION FOR APPEAL—Filed June 8, 1932

To the Honorable James A. Fee, District Judge of the United States District Court for the District of Oregon:

The Fidelity and Deposit Company of Maryland, an objecting creditor herein, deeming itself grieved by the final order and decree entered on the 12th day of May, 1932, in [fol. 45] the above proceeding, allowing the petition and application of the above named bankrupt for a discharge in bankruptcy, and granting unto the said bankrupt a discharge in bankruptcy from all his debts,

Does hereby petition for an order allowing an appeal from the said order and decree of the United States Circuit Court of Appeals for the Ninth Circuit, and prays that its appeal may be allowed, and a citation granted, directed to George C. Arenz, the above bankrupt, commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the records and proceedings duly authenticated may be trans-

mitted to the United States Circuit Court of Appeals for the Ninth Circuit.

In connection with this petition, the petitioner herewith presents his Assignment of Errors.

Fidelity and Deposit Company of Maryland, Objecting Creditor, by R. E. Pinney, Resident Vice-President. John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

[fol. 46] STATE OF OREGON,
County of Multnomah, ss:

Due service of the within Petition is hereby accepted in Multnomah County, Oregon, this 8th day of June, 1932, by receiving a copy thereof, duly certified to as such by John Lichty, attorney for petitioner.

Lewis, Lewis & Finnegan, Attorney for Bankrupt.

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ASSIGNMENTS OF ERROR—Filed June 8, 1932

Now comes Fidelity and Deposit Company of Maryland an objecting creditor herein, and in connection with its petition for appeal files the following Assignments of Error from orders of the court made and entered in the above entitled matter:

Exception No. I

That the court erred in sustaining the demurrer to the specifications of objections to a discharge, filed by the within named objecting creditor on August 21, 1931, said order being made, entered and excepted to on the 18th day of Jan-
[fol. 47] uary, 1932.

Exception No. II

That the court erred in sustaining the demurrer of the bankrupt to the amended specifications in opposition to a

discharge, filed by the objecting creditor herein on the 23rd day of January, 1932, said order being made and entered on the 12th day of May, 1932, and an exception being filed thereto by the objecting creditor.

Exception No. III

That the court erred in allowing the application and petition of the above bankrupt for a discharge in bankruptcy by making and entering an order on May 12th, 1932, granting and allowing the above bankrupt a discharge in bankruptcy, by reason whereof the appellant prays that said decrees and orders of the District Court be reversed, and the matter remanded with directions to proceed in accordance with the law.

John Lichty, Attorney for Petitioner.

Filed June 8, 1932. G. H. Marsh, Clerk.

State of Oregon,
County of Multnomah, ss:

Due service of the within Assignments of Error is hereby accepted in Multnomah County, Oregon, this 8th day of June, 1932, by receiving a copy thereof, duly certified to [fol. 48] as such by John Lichty, attorney for petitioner.

Lewis, Lewis & Finnegan, Attorneys for Bankrupt.

In United States District Court

In Bankruptcy. No. B-16042

In the Matter of George C. Arenz, Bankrupt

Order Allowing Appeal—Filed June 8, 1932

A petition having heretofore been filed by the Fidelity and Deposit Company of Maryland, an objecting creditor herein, for leave to appeal from a certain order the District Court made and entered on the 12th day of May, 1932, in the above entitled proceeding, and upon consideration thereof,

It is hereby ordered that said petition be and hereby is allowed and granted.

James Alger Fee, Judge.

[File endorsement omitted.]

[fols. 49 & 50] Bond on appeal for $250.00, approved and filed June 10, 1932, omitted in printing.

[fol. 51] Citation, in usual form, showing service on Lewis, Lewis & Finnegan, filed June 13, 1932, omitted in printing.

[fol. 52] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

STIPULATION AS TO RECORD ON APPEAL—Filed June 28, 1932

Whereas, in the above entitled proceeding, the objecting creditor, Fidelity and Deposit Company of Maryland, did, on the 8th day of June, 1932, duly file in the District Court [fol. 53] of the United States for the District of Oregon, a petition for appeal, an assignment of errors and a citation, which said appeal was duly allowed by order of the District Court upon said date,

Now therefore, it is hereby stipulated and agreed by and between Lewis, Lewis & Finnegan, attorneys for the bankrupt, and John Lichty, attorney for the objecting creditor, that the record to be certified to the United States Circuit Court of Appeals for the Ninth Circuit by George H. Marsh, clerk of the United States District Court, for the District of Oregon, on said appeal, shall consist of the following:

1. The debtor's petition and schedule,

2. Order of Adjudication and Reference dated May 4, 1931,

3. Proof of claim of Fidelity and Deposit Company of Maryland, dated May 26th, 1931,

4. Bankrupt's petition for a discharge, dated July 18th, 1931,

5. Specification of Objections of the Fidelity and Deposit Company of Maryland to a discharge of the bankrupt, filed August 21st, 1931,

6. Demurrer to specifications of objections to a discharge,

7. Order of the court dated December 14, 1931, reciting that arguments on demurrer had been had and matter taken under advisement,

[fol. 54] 8. Order sustaining demurrer of bankrupt, dated January 18th, 1932,

9. Amended specifications in opposition to a discharge filed by objecting creditor,

10. General demurrer to amended specifications in opposition to discharge,

11. Order sustaining demurrer made and entered May 12th, 1932,

12. Order of discharge dated May 12th, 1932,

13. Notice of exception dated May 21st, 1932,

14. Petition for allowance of appeal,

15. Assignments of error,

16. Order allowing Appeal,

17. Bond on Appeal,

18. Citation on Appeal.

Dated this 27th day of June, 1932.

Lewis, Lewis & Finnegan, Attorneys for Bankrupt.
John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America,
District of Oregon.—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed pages, numbered from 1 to 54 inclusive, constitute the transcript of record upon the appeal, in a case in said Court in the Matter of George C. Arenz, Bankrupt, in which Fidelity and Deposit Company of Maryland, a Corporation, is appellant, and George C. Arenz is appellee, in accordance with the praecipe of appellant filed in said cause; that I have compared the foregoing transcript with the original record in said cause and that the foregoing transcript, as corrected by me, is a full, true and correct transcript of the said record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody;

And I further certify that the fee for comparing and certifying the within transcript is $5.90 and that the same has been paid by the appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court in Portland in said District, this 16th day of July, 1932.

[Seal] G. H. MARSH,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit

In the Matter of
GEORGE C. ARENZ,
Bankrupt.

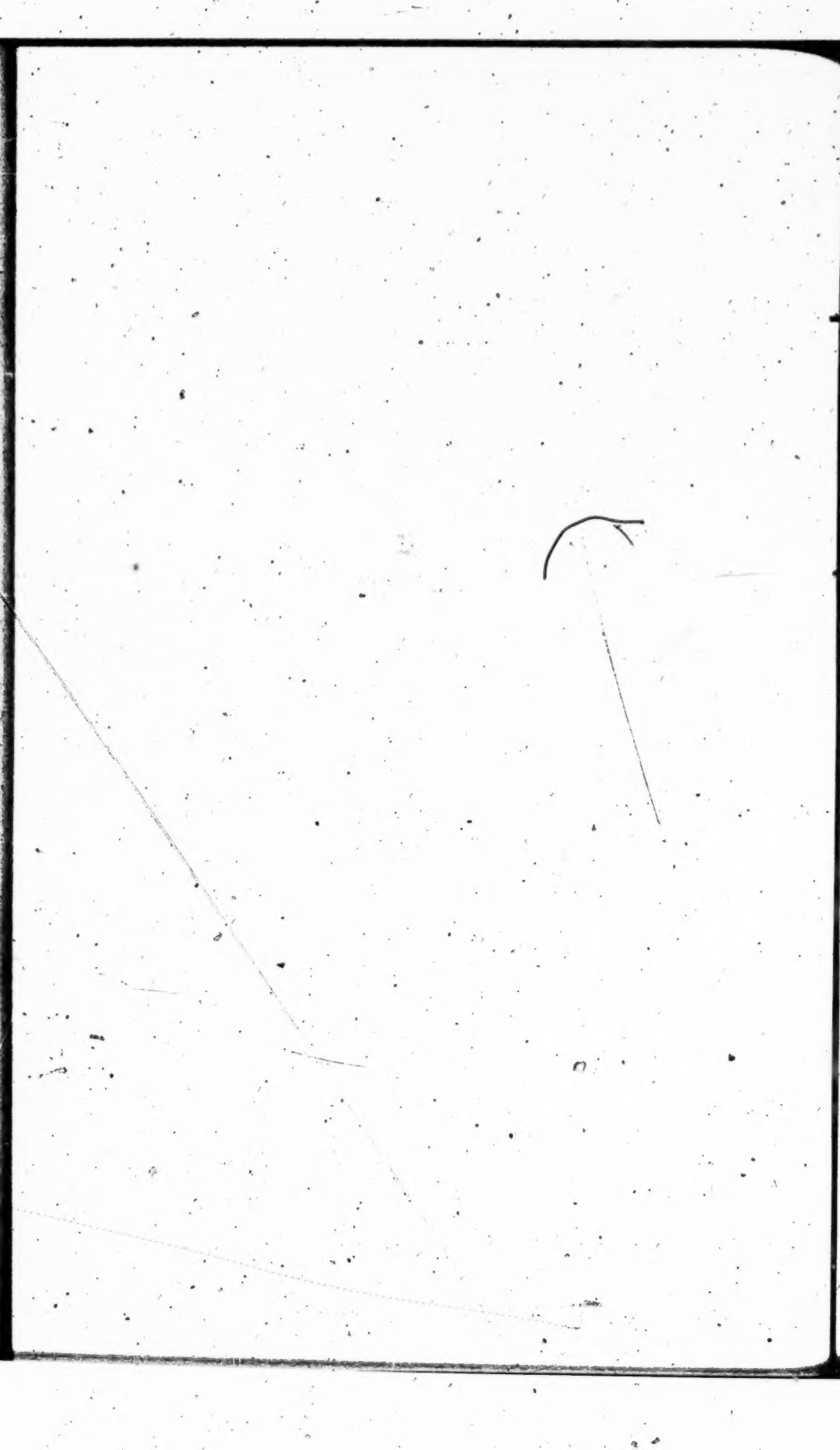
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,
Appellants,

vs.

GEORGE C. ARENZ,
Appellee.

Upon Appeal from the District Court of the United States for the District of Oregon.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.



At a stated term, to wit: the September term A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court-Room, in the City of Portland, in the State of Oregon, on Thursday the fifteenth day of September in the year of our Lord one thousand, nine hundred and thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge; Honorable JEREMIAH NETERER, District Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED above cause argued by Mr. John Lichty, counsel for the appellant, and by Mr. A. H. Lewis, counsel for the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the seventh day of November, in the year of our Lord one thousand nine hundred and thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion.

[Title of Court and Cause.]

OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS.

Upon Appeal from the District Court of the United States for the District of Oregon.

Before: WILBUR and SAWTELLE, Circuit Judges, and NETERER, District Judge.

WILBUR, Circuit Judge.—The Fidelity and Deposit Company of Maryland, engaged in the business, among other things, of furnishing surety bonds to contractors, objected to the discharge in bankruptcy of George C. Arenz, a contractor, for whom they had executed a surety bond for the sum of $71,306.25 on May 15, 1929, for the performance of a contract with the State of Oregon for the improvement of highways. This objection was based upon the ground that the bankrupt procured the execution of said surety bond by certain written

false statements concerning his financial standing made by him to the appellant to induce, and which did induce, the execution thereof; and that the appellant was compelled to pay, and did pay, a judgment of $10,000 in an action brought upon said bond by the Oregon City Sand and Gravel Company. The bankrupt demurred to the sufficiency of the objections, thus admitting the truth of the allegations. The demurrer was sustained, and the discharge granted, from which order the Surety Company takes this appeal. The question thus presented is whether or not under these circumstances the bankrupt "obtained money or property on credit, or obtained an extension or renewal of credit" within the meaning of the bankruptcy act regulating discharge. (11 U. S. C. A., § 32 (b), sub. 3; c. 406 § 6, 44 Stat. 663.) The appellee relies upon a decision of Judge Rudkin in In re Tanner, 192 Fed. 572, decided November 4, 1911, in the District Court of the Western District of Washington. This decision was to the effect that the word "property" used in the above cited section before the amendment of 1910 was so restricted by the context that while the word "property" in its comprehensive sense included such a bond, as used in the bankruptcy act relating to "discharge" it did not. Judge Rudkin stated his conclusion as follows:

> "The term, however, is not always used in this comprehensive sense in constitutional and statutory provisions, and it is manifest that it was not so used here. By the insertion of

> the words 'money or' before the word 'property' in the amendment of 1910, Congress manifestly doubted whether the term 'property' as used in the amendment of 1903 was comprehensive enough to include money; and, if it did not include money, most assuredly it did not include a contract or obligation such as this."

The Supreme Court, in 1914, in Gleason v. Shaw, 236 U. S. 538, had occasion to consider the meaning of the word "property" as used in the section of the Bankruptcy Act now under consideration. Speaking through Justice McReynolds the Court said:

> "The accurate delimitation of the concept property would afford a theme especially apposite for amplification philosophic disquisition; but the bankrupt law is a prosy thing intended for ready application to the everyday affairs of practical business, and when construing its terms we are constrained by their usual acceptation in that field of endeavor. The word property, without restriction, occurs more than seventy times in the act. Not once does it plainly refer to professional services, and except in a very few instances, to include them within its intendment would produce a patent absurdity. * * *
>
> Congress, we think, never intended that property in the paragraph under consideration should include professional services. At most it denotes something subject to ownership,

> transfer or exclusive possession and enjoyment, which may be brought within the dominion and control of a court through some recognized process. This is certainly the full extent of the word's meaning as employed in ordinary speech and business and the same significance attaches to it in many carefully prepared writings. The constitutions of many states provide that all property shall be taxed, but it has never been supposed that this applies to professional services."

This view of the Supreme Court tends to support the conclusion of Judge Rudkin that a surety bond is not property within the meaning of the section of the Bankruptcy Act under consideration. A substitution of the words "surety bond" for professional services" in the foregoing quotation illustrates the aptness of the quotation to the case at bar.

Judge Neterer, sitting in the same Court as Judge Rudkin, in September, 1926, in In re Ford, 14 F. (2d) 848, followed the decision of Judge Rudkin above quoted as to the meaning of the word property as used in 11 U. S. C. A. § 32 (b), sub. 3, supra, of the Bankruptcy Act. He also decided that the obtaining of such a surety bond was not an obtaining of an extension or renewal of credit within the meaning of that section as amended in May, 1926. (44 Stat. 663.)

The appellant claims that Judge Rudkin in In re Tanner, supra, overlooked the fact that the Su-

preme Court, as early as May, 1901, had held that the word "property" as used in the Bankruptcy Act relating to preferential transfers included "money." (Pirie v. Chicago Title and Trust Co., 182 U. S. 438.) The District Court for the Western District of Kentucky, in June, 1907, decided that the term "property" used in § 32 (b) sub. 3 of the Bankruptcy Act, supra, did not include "money." In re Pfaffinger Louisville Nat. Bkg. Co., 154 Fed. 528. However, this decision was reversed by the Circuit Court of Appeals of the Sixth Circuit January 16, 1908. In re Louisville Nat. Banking Co., 158 Fed. 403. Thus, before 1910 it had been held by the Circuit Courts of Appeals for the Sixth and Fourth (Samet v. Farmers Bank, 247 Fed. 669) Circuits that the word "property" as used in § 32-b (3) included "money," but Congress evidently concluded to settle all doubt upon the matter by adding the word "money" to the word "property." If this legislative history is at all significant in the interpretation of the present law, it would at least seem to indicate that Congress was of opinion that the word "property" used in the amendment of 1903 (c. 487, § 4-b (3), 32 Stat. 797) was not used in its all-inclusive sense, just as Judge Rudkin held.

In view of the rule that the Bankruptcy Act concerning discharge is to be liberally construed in favor of the debtor (In re Jacobs, 241 Fed. 620; Feder v. Goetz, 264 Fed. 619; In re Reisler, 278 Fed. 618; In re Braus, 248 Fed. 55; In re Cooper, 26 Fed. (2d) 585; In re Lee, 51 F. (2d) 394), we

concur in the conclusions reached by Judges Rudkin and Neterer in the cases above cited. It should be said, however, that the Court of Appeals of New York has held that where the fraudulent procurement of a surety bond is followed by the payment of money on the bond, that the money thus paid is obtained by false pretenses within the meaning of the Bankruptcy Act. In re Dunfee, 219 N. Y. 188, 114 N. E. 52. With reference to the meaning of § 17 sub. (2) of the Bankruptcy Act which provided that "liabilities for obtaining property by false pretenses or false representations" are not released by the discharge in bankruptcy, the Court of Appeals of New York in In re Dunfee, supra, in a carefully considered opinion, speaking through Justice Cuddeback, said:

> "Obtaining the bond by false representations and paying the obligee the amount of the loss should be regarded as all one transaction, which amounted to obtaining money by false representations within the Bankrupt Law. The Bankrupt Law does not require that the property shall be obtained by the bankrupt at the instant of making the false representations, nor that it shall pass directly to the bankrupt. In criminal cases the rule relating to the crime of obtaining property by false representations is the same. Commonwealth v. Harkins, 128 Mass. 85; 9 Halsbury's Laws of England, 698. The parties in the case under consideration intended at the time the false representations

were made that the bonding company should assume a contract of suretyship in Dunfee's behalf, and they must have had in contemplation all the results that naturally follow from such a contract. So when the surety company paid the loss to the obligee in fulfillment of its obligation, the law implied that the payment was at the request of Dunfee, and this implication arose from the contract of suretyship itself. As was said in Garr v. Martin, 20 N. Y. 306, 309: 'Where one person advances money for another, in payment of the debt of the latter, it is deemed at the instant of its payment, to be the money of the party for whose benefit the payment is made; so that in the eye of the law the debt is satisfied, not by the money of a third party, but by that of the debtor himself.' "

This decision of the New York Court is not cited by the parties nor is it argued that the section of the Bankruptcy Act applies to money thus paid, as distinguished from the bond itself. A similar view is taken by the Court of Civil Appeals in Gaddy v. Will, 142 S. W. 926. It is true as stated in the opinion of the Court of Appeals of New York that "The Bankruptcy Law does not require that the property shall be obtained by the bankrupt at the instant of making the false representations nor that it shall pass directly to the bankrupt," but where there are intervening causes between the representations and the payment, not necessarily contem-

plated at the time of the representations, such as unanticipated difficulties in the execution of the contract covered by the surety bond, it is doubted, whether the money paid on account of such losses is so immediately or proximately the result of the false pretenses as to constitute the prohibited offense. We have been unable to find any decision, civil or criminal, other than those cited, that has gone so far as to hold that money paid on a bond was obtained by fraud, if the bond was so procured. In the case cited by the Court of Appeals of New York, Commonwealth v. Harkins, 128 Mass. 85, supra, it was held by a divided Court that where a judgment for damages against a city was obtained by fraudulent representations as to the fact of injury, that obtaining of the payment to satisfy the judgment was not the obtaining of property by false pretenses, although of course the direct object of the false representations was to obtain the money. In the case at bar it must be presumed in favor of innocence and good sense that the contractor did not plan or expect to lose money on the job he had undertaken.

We conclude that the money paid by the Surety Company was not obtained by the false pretenses as to the bankrupt's financial standing which induced the execution of the bond within the meaning of the Bankruptcy Act.

The Circuit Court of Appeals for the Fourth Circuit approached from a different angle the problem of a surety bond obtained by the fraud of the bank-

rupt in Royal Indemnity Co. v. Cooper, 26 F. (2d) 585. In that case the surety bond was obtained by the bankrupt, W. B. Cooper, to secure deposits of the State of North Carolina in the Commercial National Bank of Wilmington, North Carolina, of which the bankrupt was a director. The bond was secured by the bankrupt's false statements of his financial condition at the time the bond was obtained. The bankrupt failed and $25,000 was recovered on the bond. The Court stated as follows:

> "We cannot agree that the reasoning in the two cases, In re Tanner, D. C., 192 Fed. 572, and In re Ford, 14 F. (2d) 848, relied upon by the appellee is controlling here. The bankrupt had given his personal bond to secure the deposit of state funds in the bank, and had deposited collateral for the same purpose, and in securing the bond from the appellant, if he did not obtain money or property on credit, he did at least obtain an extension of credit for the bank. If he was sufficiently interested in the bank to bring him within the rule of the Levy Case, Levy v. Industrial Finance Corp., 276 U. S. 281, 48 S. Ct. 298, then the effect was the same as if he had obtained the extension of credit for himself."

While the opinion is pointed and brief, it is clear that the case was decided on the theory that the bank owed the state money which it could only retain by giving a bond. This clearly involved an extension of credit to the bank by the state, for, in

the absence of such a bond, the state would have withdrawn its deposits. An extension of credit is defined in Corpus Juris as follows:

> "In commercial law an indulgence, giving time to pay a debt, or perform an obligation; the allowance on the part of the creditor to a debtor of further time to pay a debt; the granting of further time in which to do something which has been set down for a particular day; a postponement by agreement of the parties of the time set for acting."

We conclude that the opinion of the Circuit Court of Appeals for the Fourth Circuit is not in conflict with our view that the procurement of a surety bond by false pretenses is not per se an obtaining of property by false pretenses; indeed, that Court distinguished the facts of the case presented to it in Royal Indemnity Co. v. Cooper, from the facts presented to Judges Rudkin and Neterer in the two cases which we have cited (In re Tanner, supra, In re Ford, supra) and propose to follow.

Order affirmed.

[Endorsed]: Opinion. Filed November 7, 1932. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6865.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

Appellant,

vs.

GEORGE C. ARENZ,

Appellee.

JUDGMENT.

Upon appeal from the District Court of the United States for the District of Oregon.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Oregon, and was duly submitted:

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellee and against the appellant.

IT IS FURTHER ORDERED AND ADJUDGED by this Court that the appellee recover against the appellant for his costs herein expended, and have execution therefor.

[Endorsed]: Judgment. Filed and entered November 7, 1932. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. John Lichty, counsel for the appellant, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including January 9, 1933; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR,
United States Circuit Judge.

Dated, San Francisco, California,
December 6, 1932.

[Title of Court and Cause.]

APPLICATION FOR STAY OF ISSUANCE OF MANDATE.

Comes now the appellant, the Fidelity and Deposit Company of Maryland, a corporation, and respectfully petitions the Court for an order staying the issuance of the mandate entered herein.

This application is made for the purpose of applying to the Supreme Court of the United States

to obtain a writ of certiorari from the Supreme Court of the United States in the above entitled case.

JOHN LICHTY,
ROBERT D. CLAPPERTON,
Attorneys for Petitioner.

I, John Lichty, one of the attorneys for appellant, do hereby certify that the above petition is, in my opinion, well founded and is not interposed for the purpose of delay.

JOHN LICHTY.

[Endorsed]: Filed December 6, 1932. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-two (72) pages, numbered from and including 1 to and including 72, to be a full, true and correct copy of the entire record of the above entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 22nd day of December, A. D. 1932.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 74] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 6865

FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Appellant,

vs.

GEORGE C. ARENZ, Appellee

ORDER STAYING ISSUANCE OF MANDATE—Filed Jan. 3, 1933

Upon application of Mr. John Lichty, counsel for the appellant, and good cause therefor appearing, it is ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including January 16, 1933; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

Curtis D. Wilbur, United States Circuit Judge.

Dated San Francisco, California, January 3, 1933.

[File endorsement omitted.]

A true copy. Attest January 3, 1933.
Paul P. O'Brien, Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

[fol. 75] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 4, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which ac-

companied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,323. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 626. Fidelity and Deposit Company of Maryland, petitioner, vs. George C. Arenz. Petition for a writ of certiorari and exhibit thereto. Filed January 14, 1933. File No. 37,323.